

## Small Business Administration

## § 121.1103

a lower size standard unless it is recertified as small by SBA. If it does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on another assistance application, the concern must immediately inform the officials responsible for the pending procurement or other requested assistance of the adverse size determination.

(h) Limited reopening of size determinations. In cases where the size determination contains clear administrative error or a clear mistake of fact, SBA may, in its sole discretion, reopen the size determination to correct the error or mistake, provided no appeal has been filed with OHA.

[61 FR 3286, Jan. 31, 1996, as amended at 67 FR 47245, July 18, 2002]

### **§ 121.1010 How does a concern become recertified as a small business?**

(a) A concern may request SBA to recertify it as small at any time by filing an application for recertification with the Government Contracting Area Office responsible for the area in which the headquarters of the applicant is located, regardless of the location of parent companies or affiliates. No particular form is prescribed for the application; however, the request for recertification must be accompanied by a current completed SBA Form 355 and any other information sufficient to show a significant change in its ownership, management, or other factors bearing on its status as a small concern.

(b) Recertification will not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible manufacturer where the eligible small business bidder or offeror is a nonmanufacturer on a particular Government procurement.

(c) A denial of an application for recertification is a formal size deter-

mination and may be reviewed by OHA at the discretion of that office.

(d) The granting of an application for recertification has future effect only. While it is a formal size determination, notice of recertification is required to be given only to the applicant.

### **APPEALS OF SIZE DETERMINATIONS AND NAICS CODE DESIGNATIONS**

#### **§ 121.1101 Are formal size determinations subject to appeal?**

A formal size determination made by a Government Contracting Area Office or by a Disaster Area Office may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

[67 FR 47245, July 18, 2002]

#### **§ 121.1102 Are NAICS code designations subject to appeal?**

A NAICS code designation made by a procuring activity contracting officer may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a NAICS code designation may be sought in a court.

[67 FR 47245, July 18, 2002]

#### **§ 121.1103 What are the procedures for appealing an NAICS code designation?**

(a) Generally, any interested party who has been adversely affected by an NAICS code designation may appeal the designation to OHA. However, with respect to a particular sole source 8(a) contract, only the Associate Administrator for 8(a)BD may appeal.

(b) Procedures for perfecting NAICS code appeals with OHA are contained in § 19.303 of the Federal Acquisition Regulations, 48 CFR 19.303.

[61 FR 3286, Jan. 31, 1996, as amended at 63 FR 35739, June 30, 1998; 65 FR 30863, May 15, 2000]